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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,111	01/16/2002	Gianni Collina	US 18026	9340

7590

07/09/2004

Joanne W Patterson
Bassel North America Inc
912 Appleton Road
Elkton, MD 21921

EXAMINER

LU, C CAIXIA

ART UNIT

PAPER NUMBER

1713

DATE MAILED: 07/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/936,111

Applicant(s)

COLLINA ET AL. **cb13**

Examiner

Caixia Lu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 5 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaughan et al. (WO 97/48736) in view of Sacchetti et al. (US 5,759,940) for the same rationale as set forth in the previous Office action mailed on Nov. 5, 2003.

Response to Arguments

2. Applicant's arguments filed May 5, 2004 have been fully considered. The objection and rejections under 35 USC 112, 2nd paragraph are withdrawn in view of applicants amendments; however, the rejections under 35 USC 103 of the record are maintained.

Applicants argue that Vaughan refers to the use of late transition metal catalysts as catalyst components supported on silica and is silent about the drawbacks of silica support and does not furnish any incentive to overcome the drawback by supporting these catalyst components on a porous olefinic polymer. While it is true that Vaughan does not recognize the advantage of a porous olefinic polymer support over the silica support, such an advantage is known at the time of applicants' invention and is taught in Sacchetti. Sacchetti recognizes that the use of a support tends to lower the activity of catalyst considerably (col. 2, line 8-9) and, thus, expressly teach a porous olefinic polymer as support for transition metal metallocene complex to provide catalysts with high activities and controlled morphologies (col. 3, lines 9-12). Thus, one would have been motivated to use the porous olefinic polymer support of Sacchetti to Vaughan's

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catalyst composition in searching for improved activity and morphology for the catalysts. Incentive does exist.

Regarding the applicants' comparative results, it is the examiner's position that gas phase polymerization process is not considered in any circumstance to be identical to a slurry polymerization, thus, the comparison of applicants' Example 1 and Comparative Example 2 cannot provide much insight for showing criticality and unexpected results.

Mr. Gianni Collina's declaration under rule 132 filed on May 6, 2004 is noted. The declaration states that the polymerization kinetics is not affected by the difference between Example 1 and Comparative Example 2. However, the declaration does not provide any evidence to show that the only difference between Example 1 and Comparative Example 2 is the support. Because there is no proof of any kinds on the record to show when the silica support of Comparative Example 2 is replaced by the polyolefin support of Example 1, the polymer the polymer resulted will be identical to the polymer of Example, the burden of showing of criticality and unexpected results is not met by the applicants.

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory

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action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Caixia Lu whose telephone number is (571) 272-1106. The examiner can normally be reached from 9:00 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful and the matter is urgent, the examiner's supervisor, David Wu, can be reached at (571) 272-1114. The fax numbers for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1700.



Caixia Lu, Ph. D.
Primary Examiner
July 2, 2004